

Message Text

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17

ACTION CU-05

INFO OCT-01 EUR-06 ISO-00 VOE-00 /012 W

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R 290620Z JUL 74

FM AMCONSUL MUNICH

TO SECSTATE WASHDC 5197

INFO AMEMBASSY BONN

UNCLAS MUNICH 1164

E.O. 11652: N/A

TAGS: CVIS/SCUL (MUELLER-PLATZ, ANGELA)

SUBJECT: SECTION 212(E) WAIVER CASE

REF: STATE 160051 AND 113161

1) REFTEL INDICATES POST WAS IN ERROR IN ASSUMING THAT "NO OBJECTION" STATEMENT FROM CARL DUISBERG SOCIETY WOULD BE SUFFICIENT TO PERMIT CONSIDERATION OF SUBJECT'S APPLICATION FOR 212(E) WAIVER. ERROR WAS CAUSED PRIMARILY BY FACT THAT THIS IS FIRST SUCH CASE WHICH WE HAVE PROCESSED AND FACT THAT 22 CFR 42.91(C), NOTE 3 PROVIDES NO PROCEDURAL GUIDANCE IN SITUATIONS OF THIS TYPE. IN ANY EVENT, POST APOLOGIZES FOR HAVING ADDED TO THE CONFUSION IN THIS CASE. IT SHOULD BE NOTED THAT POST, IN ITS OM OF MAY 22 TO SCA/VO, STATED THAT WE WERE WAITING FOR CARL DUISBERG SOCIETY TO ISSUE "NO OBJECTION" STATEMENT. IF THAT APPROACH WAS INCORRECT, AS IT IS NOW EVIDENT, IT WOULD HAVE BEEN HELPFUL IF OUR MIS-UNDERSTANDING HAD BEEN POINTED OUT AT THAT TIME.

2) NEVERTHELESS, UP TO POINT OF ERROR IN OUR LETTER OF JULY 11, IT APPEARS THAT CARL DUISBERG SOCIETY, AT LEAST, WAS ON PROPER TRACK WITH RESPECT TO TYPE OF STATEMENT NEEDED. ANOTHER PART OF THE PROBLEM, HOWEVER, IS THAT THAT TRACK LED NOWHERE. SOCIETY'S LETTER OF JULY 10, TO WHICH OUR LETTER OF JULY 11 WAS IN REPLY, INDICATED THAT SOCEITY HAD CONTACTED GERMAN FOREIGN MINISTRY, BUT HAD BEEN INFORMED THAT MINISTRY HAD NEVER HEARD OF A "NO OBJECTION" STATEMENT AND COULD NOT IN ANY EVENT UNDERSTAND WHY IT SHOULD BECOME INVOLVED IN MATTER CONNECTEED WITH PRIVATE CITIZEN'S COMPLIANCE WITH IMMIGRATION LAWS OF SOME FOREIGN COUNTRY. UPON

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RECEIPT REFTEL, POST REQUESTED EMBASSY CONSULAR SECTION IN BONN

TO ASSIST. INFORMATION RECEIVED SO FAR SUGGESTS THAT EMBASSY BEEN NO MORE SUCCESSFUL THAN CARL DUISBERG SOCIETY IN FINDING ANYONE IN FOREIGN MINISTRY WHO WILL ADMIT TO HAVING ANY RESPONSIBILITY IN THE MATTER.

3) IT SHOULD ALSO BE NOTED THAT SUBJECT'S FILE CONTAINS A LETTER, DATED APRIL 5, 1974 FROM GERMAN MINISTRY OF NUTRITION, AGRICULTURE AND FORESTRY (THE AGENCY WITH PROVIDED HER STIPEND) STATING THAT THE FACT SUBJECT MAY HAVE TO WAIT TWO YEARS TO OBTAIN A U.S. VISA IS OF NO CONCERN TO THE GERMAN GOVERNMENT. THE LETTER GOES ON TO SUGGEST THAT SUBJECT CONTACT THIS OFFICE FOR A SPECIAL EXEMPTION BUT THIS, OF COURSE, IS PRECISELY WHAT THE GERMAN STATEMENT IS REQUIRED FOR IN THE FIRST PLACE. THE CRUX OF THE PROBLEM, THEREFORE, APPEARS TO BE NOT THAT THE GERMAN AUTHORITIES ARE OPPOSED TO SUBJECT'S DEPARTURE FOR THE UNITED STATES AT THIS TIME, BUT RATHER THAT THEY ARE OPPOSED TO SAYING THAT THEY ARE NOT OPPOSED SINCE THEY CONSIDER THE MATTER BEYOND THEIR PURVIEW.

4) ON ANOTHER ASPECT OF THIS CASE, THE WHOLE QUESTION OF THE "NO QUESTION" ROUTE FIRST AROSE THEN INS ST. PAUL INFORMED THE PETITIONER THAT SUBJECT, AS AN UNMARRIED PERSON, WAS NOT ENTITLED TO FILE FORM I-612. WHETHER SUBJECT COULD MAKE A CASE FOR HARDSHIP IS OF COURSE UNKNOWN. HOWEVER, GIVEN THE FACT THAT A FIANCEE VISA APPLICANT INELIGIBLE ON GROUNDS THAT COULD BE WAIVED UNDER 212(G), (H) OR (I) IS ENTITLED TO APPLY FOR A WAIVER CONDITIONED ON CONCLUSION OF THE FORTHCOMING MARRIAGE, IT WOULD SEEM LOGICAL THAT A FIANCEE VISA APPLICANT SUBJECT TO THE TWO-YEAR RESIDENCE REQUIREMENT SHOULD BE ENTITLED TO APPLY FOR A 212 (E) WAIVER PREDICATED ON CONSIDERATIONS THAT WOULD BE PERTINENT FOLLOWING MARRIAGE. IN OTHER WORDS, IF A K-1 APPLICANT CONVICTED OF A CRIME CAN FILE AN I-601 AS A "PROSPECTIVE SPOUSE", WHY CAN'T A K-1 APPLICANT SUBJECT TO THE FOREIGN RESIDENCE REQUIREMENT FILE AN I-612 AS A "PROSPECTIVE SPOUSE"? WHILE PERHAPS NO LONGER PERTINENT IN THE INSTANT CASE, IT WOULD BE HELPFUL IF THIS ISSUE WOULD BE CLARIFIED FOR FUTURE REFERENCE. SPIVACK

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